IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
WEDNESDAY, THE TWENTY THIRD DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MR JUSTICE A.GOPAL REDDY
WRIT PETITION NO : 26968 of 1999

Between:

True Well Pipe Industries Rep.by its partner M.Venkata Ramakrishna, St.No.61, Narukur Road, Allipuram, Nellore.

..... PETITIONER

AND

1. Government of Andhra Pradesh, rep.by its Secretary, Industries & Commerce Department, Secretariat, Hyderabad.
2. Commissioner of Industries, Government of Andhra Pradesh, Hyderabad.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ or order or direction, declaring the condition No.1 issued in Memo No.741/IP/A2/94, dated 6-11-1997 issued by the Government of Andhra Pradesh as illegal and inoperative and accordingly strike down the same and declare that the petitioner is entitled to incentives contemplated under G.O.Ms.No.498, Industries & Commerce (IA) Department, dated 16-10-1989 with reference to the capital asset purchased from APSFC and accordingly direct the respondent authorities to extent the benefit of industrial incentives to the petitioner industry with reference to the said capital assets also and pass such other order or orders.

Counsel for the Petitioner: MR.B.RAVEENDRANATHA REDDY

Counsel for the Respondents: G.P. for Industries.

The Court made the following Order:

The petitioner purchased a sick industry viz. M/s. Sri Lakshmi Maruthi P.V.C. Pipes Private Limited for Rs.42.50 lakhs in an auction conducted by the Andhra Pradesh State Finance Corporation (APSFC) under Section 29 of State Finance Corporation Act. The land and buildings were registered in the name of one of the partners viz. Rambabu and the plant and machinery were registered in favour of T.Gopalakrishna, who entered into a partnership with the petitioner for mobilization of capital and necessary infrastructure by constituting a partnership firm by name M/s. True Well Pipes. Thereafter, they approached the District Industries Centre, Nellore for grant of eligibility certificate, so as to avail Industrial Incentives, viz. fixed capital investment, which is the investment made on land and machinery of the new industrial units and small-scale industries as well as sales tax holiday for a period of five years, subject to ceiling of Rs.35 lakhs on sales tax during the entire holiday period, provided by the Government of Andhra Pradesh in G.O.Ms.No.498, Industries & Commerce (IA) Department, dated 16-10-1989. While so, Government through its memo No.741/IP/A2/94, dated 6-11-1997, clarified that "plant, machinery and equipment shifted from one place to another, including part of such value of shifted machinery, will not be eligible for incentives".

Questioning the said clarification, the present writ petition has been filed contending that once the petitioner purchased the unit from APSFC, the condition No.1 imposed in the memo dated 6-11-1997 viz. "original assets should not have enjoyed any incentives under any scheme" has to be struck down and to declare that the petitioner is entitled for incentives under G.O.Ms.No.498 without reference to the said condition.

Respondents filed counter-affidavit contending that the petitioner failed to obtain any registration i.e. provisional SSI Registration/IEM

acknowledgement/Letter of Intent/100% EOU/ Approval or similar approval/Registration with the respective authorities to set up the industry, subject to continuity in the validity of registration/approval. No industry is entitled to any incentives under any scheme announced by the Government without production of valid license. It was further contended that as the petitioner unit failed to prefer claim application for incentives, under the present scheme or any scheme, the question of sanction of incentives does not arise.

Heard both sides.

Learned Counsel for the petitioner submits that this Court disposed of W.P.No.21965 of 1999 with a direction to consider the claim of the petitioner therein for sales tax holiday in terms of G.O.Ms.No.498 dated 16-10-1989. In view of the same, the respondent may be directed to consider the sales tax holiday, on petitioner making an application for the said purpose.

In view of the fact that the petitioner has not even made any application claiming incentives as per G.O.Ms.No.498 dated 16-10-1989, it cannot complain that the respondents are not granting incentives.

The writ petition is accordingly disposed of permitting the petitioner to file an application for such incentives within four weeks from today and on such filing of the application, the respondents shall consider the same and pass appropriate orders within eight weeks thereafter. No costs.

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23-06-2004

kdl

To

1. The Government of Andhra Pradesh, rep.by its Secretary, Industries & Commerce Department, Secretariat, Hyderabad.
2. The Commissioner of Industries, Government of Andhra Pradesh, Hyderabad.
3. Two CCs to the G.P. for Industries, High Court Buildings, A.P. Hyderabad (OUT)
4. Two CD Copies.